

FILE NO.



# John Edgar Hoover in World War

October 1941

Mrs. John Edgar Hoover, Administrative Director of the  
Bureau of Investigation, Department of Justice

Department of Justice, Washington, D.C.

IN TESTIMONY WHEREAS A COPY OF THE RECORDS OF THE BUREAU OF  
INVESTIGATION, DEPARTMENT OF JUSTICE, IS HEREBY  
SENT TO YOU FOR YOUR INFORMATION.

RECORDED FOR THE ADMINISTRATION OF THE WAR  
AND POST-WAR UNITED STATES DEPARTMENT OF  
LABOR, AS ORDERED.

# In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 159

MRS. EULA MAY WALTON, ADMINISTRATRIX OF THE  
ESTATE OF FRED WALTON, DECEASED, PETITIONER

SOUTHERN PACKAGE CORPORATION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME  
COURT OF MISSISSIPPI*

MEMORANDUM FOR THE ADMINISTRATOR OF THE WAGE  
AND HOUR DIVISION, UNITED STATES DEPARTMENT OF  
LABOR AS AMICUS CURIAE

This suit was brought to recover overtime compensation, liquidated damages, and attorney's fees under the Fair Labor Standard Act. The employee was a night watchman in a plant engaged in the manufacture of lumber and veneer products, a substantial portion of which was shipped in interstate commerce. The court below reversed a judgment for the employee on the ground that he was not engaged in an occupation necessary to the

production of goods for interstate commerce. 11 So. (2d) 912.

The decision below is in direct conflict with this Court's decision in *Kirschbaum Co. v. Walling*, 316 U. S. 517, and, unless this Court should desire to determine the other questions raised by respondent, should, it is submitted, be reversed and remanded on the petition for certiorari without argument. The court below refers at some length to the opinion of this Court in the *Kirschbaum* case and appears to reject its reasoning. 11 So. (2d), at 917-918). Its decision, however, is placed upon the supposed distinction that in this case a night watchman was involved, whereas in other cases holding watchmen covered, they "were in each instance, almost without exception, at least on duty while such goods were being produced, or were employed specially to guard the goods while awaiting shipment" (11 So. (2d), at 918). The record and this Court's opinion in *Kirschbaum* negate any such distinction. The employees involved in *Kirschbaum* included a night watchman. (*Kirschbaum* record, p. 63). In describing their duties the Court said, "The watchmen protect the buildings from fire and theft" (316 U. S., at 519). Coverage was predicated upon the

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Respondent has also raised questions as to the survivorship of the cause of action and the statute of limitations, but the court below found it unnecessary to pass upon these points. This memorandum is concerned only with the question of coverage.

theory that "maintenance of a safe, habitable building is indispensable to" the production of goods for interstate commerce (316 U. S., at 524). The facts of the instant case fall squarely within this rationale. The watchman was employed "for the purpose of reporting any fires and trespassers" (11 So. (2d), at 912). And even if his duties related only to the protection of the plant rather than the goods produced (11 So. (2d), at 915), he was engaged in maintaining a building so that production could be carried on. The fact that this protection is afforded at night, when the need for it may be greater, is hardly a basis for denying coverage. Cf. *Bowie v. Gonzales*, 117 F. (2d) 11, 20 (C. C. A. 1), where employees engaged in repair and maintenance of sugar mills in the dead season were held covered.

Respectfully submitted.

CHARLES FAHY,  
*Solicitor General.*

DOUGLAS B. MAGGS,  
*Solicitor,*

IRVING J. LEVY,  
*Associate Solicitor,*  
*United States Department of Labor.*

SEPTEMBER 1943.

In the *Kirschbaum* case, the watchman was the employee of the owner of the building, not of an employer producing for commerce. In the instant case, partitioner's employer itself manufactures and ships in interstate commerce.